

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

4 NEUROGRAFIX, a California)
corporation; WASHINGTON)
5 RESEARCH FOUNDATION, a)
not-for-profit Washington)
6 corporation,)
)
7 Plaintiffs,)
)
8 vs.) No. CV 10-1990 MRP(RZX)
)
9 SIEMENS MEDICAL SOLUTIONS)
USA, INC., a Delaware)
10 corporation; and SIEMENS)
AKTIENGESELLSCHAFT, a)
11 German corporation,)
)
12 Defendants.)
)

15 DEPOSITION OF MICHAEL E. MOSELEY,
16 Ph.D., taken on behalf of the
17 Plaintiff, at 950 Page Mill Road,
18 Palo Alto, California, at 8:48 a.m.
19 before Janis L. Jennings, Certified
20 Shorthand Reporter No. 3942, CLR, CRP

1 APPEARANCES :

2

3 For the Plaintiffs:

4

5 RUSS AUGUST & KABAT
6 BY: MARC A. FENSTER, ESQ.
7 12424 Wilshire Boulevard
8 12th Floor
9 Los Angeles, California 90025
10 310.979.8278
11 mfenster@raklaw.com

12

13 For the Defendants:

14
15 KIRKLAND & ELLIS LLP
16 BY: SEAN M. McELDONNEY, ESQ.
17 655 Fifteenth Street, N.W.
18 Washington, D.C. 20005
19 202.879.5161
20 smceldowney@kirkland.com

21

22 Also Present:

23 Michael Barber, Videographer

24

25

1 A. One skilled in the art would think that a
2 conspicuity of 1.1 is a measure of something being
3 brighter than something else by 1.1.

4 Q. Okay. And 1.1 means that it is at least
10:18 5 10 percent greater than or 10 percent brighter than;
6 is that right?

7 MR. McELDONNEY: Objection. Vague.

8 THE WITNESS: One way -- is one way of
9 expressing that.

10:18 10 BY MR. FENSTER:

11 Q. If it were 1.2, would you understand that
12 to mean that the nerve has to be 20 percent greater
13 than the non-neural tissue?

14 A. It is one way to express it; right.

10:18 15 Q. Okay. Okay. So a conspicuity of 1.1
16 means that the nerve is at least 10 percent brighter
17 than the non-neural tissue; is that right?

18 MR. McELDONNEY: Objection. Vague.

19 THE WITNESS: I think we have been over
10:18 20 that. That's one way of -- that's one way of
21 expressing it.

22 BY MR. FENSTER:

23 Q. Okay. And would you agree that that
24 language that "the conspicuity of the nerve that is
10:19 25 at least 1.1 times that of the non-neural tissue"

1 Mischaracterizes and compound.

2 THE WITNESS: One skilled in the art would
3 understand conspicuity of 1.1 -- it is what it says,
4 that the nerve measurable, conspicuity, how it's
10:23 5 defined, is at least 1.1, or 10 percent more than a
6 non-neural tissue.

7 Now, that being said -- that being said,
8 one skilled in the art would expect that within this
9 context he or she would be told what is being
10:24 10 compared, what is being measured, how it's being
11 expressed or quantitated or calculated or assessed.
12 1.1 doesn't necessarily mean it's a ratio. I could
13 eyeball it, guesstimate it. I mean, there are
14 different ways of coming at 1.1.

10:25 15 MR. FENSTER: Let me mark as Exhibit 4
16 Exhibit C to your opening report.

17 (Whereupon, Moseley Exhibit 4 was
18 marked for identification.)

19 THE WITNESS: Okay. I see it.
10:25 20 BY MR. FENSTER:

21 Q. Do you recognize Exhibit 4?

22 A. Yes.

23 Q. And what is it?

24 A. Exhibit 4 is a series of regions of
10:25 25 interest or regions that I have marked for a

1 DEPOSITION OFFICER'S CERTIFICATE
2
3

4 STATE OF CALIFORNIA)
5 COUNTY OF SANTA CLARA) ss.
)

6 I, Janis L. Jennings, hereby certify:

7 I am a duly qualified Certified Shorthand
8 Reporter in the State of California, holder of
9 Certificate Number CSR 3942 issued by the Court
10 Reporters Board of California and which is in full
11 force and effect. (Fed. R. Civ. P. 28(a)).

12 I am authorized to administer oaths or
13 affirmations pursuant to California Code of Civil
14 Procedure, Section 2093(b) and prior to being
15 examined, the witness was first duly sworn by me.
16 (Fed. R. Civ. P. 28(a), 30(f)(1)).

17 I am not a relative or employee or attorney
18 or counsel of any of the parties, nor am I a
19 relative or employee of such attorney or counsel,
20 nor am I financially interested in this action.
21 (Fed. R. Civ. P. 28).

22 I am the deposition officer that
23 stenographically recorded the testimony in the
24 foregoing deposition and the foregoing transcript is
25 a true record of the testimony given by the witness.

1 (Fed. R. Civ. P. 30(f)(1)).

2 Before completion of the deposition, review
3 of the transcript [XX] was [] not requested.

4 If requested, any changes made by the deponent (and
5 provided to the reporter) during the period allowed,
6 are appended hereto. (Fed. R. Civ. P. 30(e)).

7

8 Dated: February 9, 2011

9

10

11

12



JANIS JENNINGS

13

14

15

16

17

18

19

20

21

22

23

24

25

CSR 3942, CLR, CRR